REMARKS

Claims 1-6, 8, 9, 11, 12, 27-31 and 38 are currently pending in the subject application and are presently under consideration. Claim 40 has been renumbered as claim 38 as advised in the Office Action.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Objection of Claims

The numbering of claims in not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout prosecution. Claim 40 has been renumbered as claim 38 as indicated by the Examiner in the Office Action.

II. Rejection of Claims 1-6, 8, 9, 11, 12 and 27-31 Under 35 U.S.C. §103(a)

Claims 1-6, 8, 9, 11, 12, 27-31, and 38 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Yoakum, *et al.* (US 7,139,797 B1). This rejection should be withdrawn for at least the following reason. Yoakum *et al.* does not teach or suggest all the limitations of the subject claims.

> A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning. See *KSR v. Teleflex*, 550 U.S. ___, 127 S. Ct. 1727 (2007) citing Graham v. John Deere Co. of Kansas City, 383 U. S. 1, 36 (warning against a "temptation to read into the prior art the teachings of the invention in issue" and instructing courts to "'guard against slipping into the use of hindsight'" (*quoting Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co.*, 332 F. 2d 406, 412 (CA6 1964))).

The subject claims relates to presenting graphical indicia representative of a user's status. In one aspect, costs associated with rendering an incorrect image versus the benefit of rendering an correct image can be employed in dynamically rendering the graphical indicia. For example, the system can infer that user's status and select a graphical indicia representative of the status to render. However, if the image incorrectly

represents the user's actual status, other users who rely on this indicator of status may take incorrect action. If the user is in a meeting and the indicia indicates that the user is at lunch, another user may decide to call the user, thereby, interrupting the meeting. In particular, independent claim 1 recites *a state component that receives information relating to a state of at least one entity, wherein an entity is an individual or group of individuals; and a notifications component that dynamically renders at least one graphical indicia representative of the entity's state to at least one user, the notification component employs* ***a utility component that factors cost associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit of rendering graphical indicia that correctly represents the entity's state.***

Contrary to assertions in the Office Action, Yoakum *et al.* does not teach or suggest the aforementioned novel features as recited in the subject claims. The Office Action states that Yoakum *et al.* does not disclose a utility component that factors cost associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit of rendering graphical indicia that correctly represents the entity's state, but asserts that it would been obvious based upon the teaching of the cited reference. Applicants' representative respectfully disagrees with this assertion. The Office Action dated May 14, 2008 asserts that a cost benefit analysis is inherent in the estimate of presence information of the user and that there are limitless variations in profile and rule construction. On the contrary, the cited reference fails to discuss any cost/benefit analysis. Yoakum *et al.* discloses a system that monitors user activity and location information to determine the user's current status and the devices that may be available to them at the location. The system then employs user defined rules that produce a prioritized list of communication devices that can be employed to communicate with the user. (*See Yoakum et al. e.g., column 3, lines 40-44, column 11, line 59-column 12, line 53*) As such, the list is based upon user specified rules and not any type of cost-benefit analysis. The cited reference does not disclose any type of cost versus benefit analysis in determining the priority of the communication methods. Yoakum *et al.* merely states that current and past device state information may be used in determining presence information and also fails to suggest that rules are constructed by the system based upon any type of cost-benefit analysis. Yoakum *et al.* provides a determination of the user's

presence and relies upon user defined rules to determine which status indicia to present. In addition, the Office Action asserts that when a user formulates rules they calculate a cost-benefit in determining which users to allow contacting them. On the contrary, Yoakum *et al.* does not make any suggestion within the specification along these lines. The cited reference does not make any suggestions regarding a cost-benefit analysis in determining status indicia to present. Moreover, the claim specifically recites that a utility component ***factors cost associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit of rendering graphical indicia that correctly represents the entity's state***. Yoakum *et al.* is silent regarding any type of analysis related to cost of rendering incorrect status indicia versus the benefit of rendering correct status indicia. The cited reference determines the presence information and relies on the user rules to display the status indicia regardless of whether the presence information is correct or incorrect. As such, Yoakum *et al.* does not teach all of the elements of claim 1.

Independent claim 27 recites *receiving state information associated with a state of at least one entity, wherein an entity is an individual or group of individuals;* ***dynamically rendering at least one graphical indicia representative of the state based upon cost associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit of rendering graphical indicia that correctly represents the entity's state****; and presenting the at least one graphical indicia to a user.* As discussed above, Yoakum *et al.* does not disclose any type of cost benefit analysis and is silent regarding cost of rendering graphical indicia that incorrectly represents the entity's state versus benefit of rendering graphical indicia that correctly represents the entity's state. As such, the cited reference fails to make obvious all elements of the subject claim.

Independent claim 38 recites *means for dynamically rendering at least one graphical indicia representative of the entity's state to at least one user, the notification component determines graphical indicia to render based upon* ***a utility component that factors cost to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at least one user of rendering graphical indicia that correctly represents the entity's state****; means for the at least one entity to define* ***a plurality of sets of graphical indicia representing the entity's***

states, each set comprises at least one graphical indicia that is different for a particular state than the other sets, the entity assigns at least one set for display to a first user and at least one other set for display to a second user. As noted supra, Yoakum *et al.* does not disclose any type of cost benefit analysis and is silent regarding cost of rendering graphical indicia that incorrectly represents the entity's state versus benefit of rendering graphical indicia that correctly represents the entity's state. Additionally, the subject claim discloses that the entity can define differing sets of graphical indicia, where for the same state a different graphical indicia can be assigned in each set. This allows for the entity to have different sets of graphical indicia for different users. For example, a set can be defined for co-workers and a different set can be defined for friends. The Office Action asserts that different communication methods can be presented to different users under the same circumstances based upon the rules. However, the rules merely provide for a user to be presented with different state information based upon the presence information. Yoakum *et al.* does not disclose that differing graphical indicia can be defined for the same state. In the cited reference, given the same state information determined by the rules to be presented to the user, the same graphical indicia would be presented. As such, Yoakum *et al.* does not teach this feature of the subject claim.

Moreover, claim 2 recites ***the notification component renders graphical indicia as a function of the at least one user's device's capability***. Column 10, lines 54-67 and column 11, line 25 are cited as teaching this feature. However, this section merely states that a presence application is implemented on a subscriber device and provides a prioritized list of methods to contact a user. The section does not disclose any information regarding the capabilities of devices of the user that will receive the status and render the graphical entity status indicia based upon the user's device capabilities. As such, Yoakum *et al.* does not teach this feature of the subject claim.

Claim 5 recites ***the notification component dynamically renders annotations or comments as a function of the entity's state, wherein the entity inputted annotations or comments for each entity state***. Column 10, lines 40-47 is cited as teaching this feature. The cited section discloses a user defined profile which defines user devices and rules. This section does not disclose that a user can enter annotations or comments for each state and that the notification component will display them as a function of the user's

state. Hence, the cited reference does not teach the notification component dynamically renders annotations or comments as a function of the entity's state, wherein the entity inputted annotations or comments for each entity state.

In addition, claim 8 recites ***the entity defines the order in which users will receive the graphical indicia representative of the entity's state***. The subject claim allows the entity to determine the order in which users will receive the graphical status indicia. This allows the entity to let higher priority users to be notified prior to lower priority users. Column 4, lines 44-52 is cited as teaching this feature. However, this section merely makes a general statement that a profile can allow a user to control delivery and user of presence information. All discussions of the profile in the reference relate to rules that determine which state information will be presented to users. The cited reference does not provide any suggestion that a user specifies the order in which users will receive status information. Yoakum *et al.* is silent regarding this feature of the subject claim.

Claim 11 recites *the entity defines* ***a plurality of sets of graphical indicia representing the entity's states, each set comprises at least one graphical indicia that is different for a particular state than the other sets, the entity assigns at least one set for display to a first user and at least one other set for display to a second user***. The subject claim discloses that the entity can define differing sets of graphical indicia, where for the same state a different graphical indicia can be assigned in each set. This allows for the entity to have different set of graphical indicia for different users. For example, a professional appearing set of indicia can be defined for co-workers and a more casual appearing set of indicia can be defined for friends. As discussed above with respect to claim 38, Yoakum *et al.* does not teach this feature of the subject claim.

Claim 29 recites ***providing multiple tiles of the at least one graphical indicia for a particular state, wherein each tile differs in part according to a user that the at least graphical indicia will be presented***. The Office Action cites column 6, lines 36-52 and column 11, lines 11-25 as teaching this feature. These sections merely refer to the profile defining rules for determining the state information that is presented to users. The sections are silent regarding having differing graphical indicia for the same state based

upon the user receiving the state information. Thus, Yoakum *et al.* does not teach this feature of the subject claim.

Claim 30 recites ***the user presented a plurality of graphical indicia representative of states of a plurality of entities, the user ordering display of the graphical indicia according to priority of the entities***. The subject claim discloses that a user who is presented graphical indicia representing stated of multiple entities can defined the order of display of the graphical indicia to represent their view of the priority of the entities. For example, the user may decide to put the graphical indicia of the higher priority entities before lower priority entities. The cited sections, column 6, lines 28-31 and column 10, lines 23-26 merely states that a user can identify users for which they would like to receive presence information. The sections are silent regarding any type of priority associated with the received presence information. Yoakum *et al.* is silent regarding this feature of the subject claim.

Claim 31 recites ***automatically ordering display of the graphical indicia based upon the frequency of communication between the user and each of the entities***. As discussed above, Yoakum *et al.* does not teach display ordering of graphical indicia. The Office Action cites column 6, lines 28-31, column 10, lines 23-26 and column 13, lines 33-36 as teaching this feature. On the contrary, these sections state that presence information can be filtered based upon a user profile. The sections are silent regarding any type of ordering based upon frequency of communication. As such, the cited reference also fails to disclose automatically ordering display of the graphical indicia based upon the frequency of communication between the user and each of the entities.

In view of the foregoing, applicants' representative respectfully submits that Yoakum, *et al.* fails to teach or suggest all limitations of independent claims 1, 27, and 38 (and claims 2-6, 8, 9, 11, 12, 28-31that depend there from), and thus fails to make obvious the subject claims. Accordingly, withdrawal of this rejection is respectfully requested.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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